



**THE ATTORNEY GENERAL
OF TEXAS**

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

July 9, 1969

Honorable Robert S. Calvert
Comptroller of Public Accounts
State Capitol
Austin, Texas 78711

Opinion No. M-428

Re: Whether bequests under
a will to towns of
Edinburg, Johnson County,
Indiana, and Waco,
McLennan County, Texas,
for the purpose of main-
taining cemeteries are
exempt from inheritance
tax.

Dear Mr. Calvert:

Your letter directed to this office requesting a
written opinion reads, in part, as follows:

" . . . Decedent . . . died testate a resident of
McLennan County, Texas, on August 16, 1967, and
all the required reports under the Inheritance
Tax Law have been made and filed with this
Department.

"Under the terms of the last will and testament
of the deceased, bequests of five per cent of
the income from the . . . Decedent's . . .
Foundation were made to each of the following:

- "(1) 'Town of Edinburg, Johnson County,
Indiana, for the purpose of mainte-
nance and upkeep of the Rest Haven
Cemetery, Edinburg, Indiana.'
- "(2) 'City of Waco, McLennan County, Texas,
for the purpose of maintenance and
upkeep of Oakwood Cemetery, Waco,
Texas.'

"Your Department has passed on similar questions
in Opinions M-110 and M-228. Therefore, we wish

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to be advised whether or not these bequests are exempt as provided under Article 14.015 of Chapter 14, Title 122A, Taxation-General."

You have furnished us with a copy of the last will of Decedent, together with a letter from the Attorney representing his estate, which enclosed a Xerox copy of Article 2, Chapter 8, Title 1, of the Administrative Code of the City of Waco covering Municipal Cemeteries. This Article reads in part as follows:

"Article 2.-Municipal Cemeteries.

"SECTIONS 1-805. LOCATIONS AND NAMES.
There shall be four Public Cemeteries under the control of the City of Waco, viz:

* * * *

"SECTION 1-805.3. 'OAKWOOD CEMETERY.'
Located south of the City of Waco, at the terminus of South Fifth Street, about one and a half miles from the public square."

Article 14.015, Revised Civil Statutes, Title 122A, Taxation-General, reads, in part, as follows:

"Art. 14.015 Exempt Transfers

"The inheritance tax imposed by Article 14.01 shall not apply to the following transfers of property:

* * * *

"(3) Public Use. Property transferred to or for the use of this state or any town therein for public purposes."

The Administrative Code of the City of Waco, supra, provided for four public cemeteries (one of which is Oakwood Cemetery), and places all four of them under the control of the City of Waco, which makes it the duty of the City to maintain them as public cemeteries. Maintenance of a public cemetery is certainly for a "public use" and "public purpose." It follows that the bequest to the City of Waco for the maintenance of this cemetery is one which comes squarely within the provisions of Article 14.015, Section 3, supra, as being a transfer to a town of this State for a public purpose or public use. It

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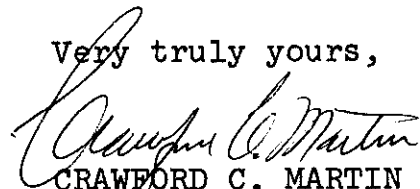
relieves the City of Waco of a burden it would otherwise have to shoulder with City funds were it not for this bequest. We therefore hold it to be an exempt transfer.

The transfer, on the other hand, to the Town of Edinburg, Johnson County, Indiana, is not an exempt transfer because it is not a transfer to or for the use of a town within this State as provided in Article 14.015, Vernon's Civil Statutes, or for any other exempt purpose. Article 14.015(3) expressly contemplates an exemption for property transfers "for the use of this state or any town therein . . ." (Emphasis added)

S U M M A R Y

A transfer to or for the use of a town within this State for public purposes is an exempt transfer. A transfer to or for the use of a town which is not a Texas town is not an exempt transfer.

Very truly yours,



CRAWFORD C. MARTIN
Attorney General of Texas

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APPROVED:
OPINION COMMITTEE

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